

The Data & Marketing
Commission

Enforcing Higher Industry Standards

Annual Report 2021/22

The DMA Code Principles

/ Respect privacy

Act in accordance with your customer's expectations

/ Be honest and fair

Be honest, fair and transparent throughout your business

/ Be diligent with data

Treat your customer's personal data with the utmost care and respect

/ Take responsibility

Act responsibly at all times and honour your accountability

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About the Data & Marketing Commission

The Data & Marketing Commission (DMC) manages (accepts and hears) complaints made against the activities of the Data & Marketing Association (DMA) members in relation to the DMA Code and considers emerging issues arising from complaints to contribute advice and support to the DMA in enabling higher professional standards.

The DMC is the body which enforces the **DMA Code** and forms part of, and is funded by, the Association and the Advertising Standards Board of Finance (ASBOF). The DMA Code and DMC are established to give effective protection to recipients, users and practitioners of one-to-one marketing, ensuring that companies observe high standards of integrity and trade fairly with their customers and with each other. This is achieved through the investigation of complaints, direct marketing issues and practices. The DMC and DMA have also recognised the potential value of shared research or other action to build marketing understanding, awareness of industry standards and compliance.

The DMC comprises an independent Chief Commissioner, two independent Commissioners and two industry Commissioners. Independent Commissioners serve on a paid basis and industry Commissioners serve on a voluntary basis. Decisions which relate to the adjudication of complaints about a member of the DMA are taken independently by the DMC. In addition to requiring corrective action or operational changes to ensure compliance the DMC can, in any cases of serious wrongdoing, make a recommendation to the DMA Board to terminate a company's membership.

Where the DMC concludes that a member is in breach of the Code the member is entitled to appeal against the ruling. The DMC's Appeals Commissioner for this year is John Bridgeman CBE TD DL, who was appointed by the Board of the DMA.

- > The DMC will address any complaints against DMA members where the complaint is within the scope of the DMA Code.
- > If the complaint is not covered by the Code, it is referred to another relevant organisation, for example, complaints which relate to TV advertising are referred to the Advertising Standards Authority.
- > The Secretariat of the DMC aims to confirm receipt of all complaints within two working days and aims to achieve at least 65% satisfaction levels with the action taken by the DMC in relation to cases dealt with by formal or informal procedures.
- > Every complainant is informed of the action taken and/or the outcome of investigations.
- > In addition, the DMC aims to complete 80% of formal adjudications within three months of the first dialogue with a DMA member or any other party and register and progress complaints within seven working days.
- > The DMC aims to have no cases reversed after action by the Independent Appeals Commissioner and no successful judicial reviews or legal challenges, and makes available key trend information on complaints as required.

Minutes of the DMC Board meetings are published on the [DMC website](#).

About the Commissioners

The Commissioners are expected to demonstrate sound judgement and analytical skills and have the ability to digest and make good sense of often complex cases, taking both a big picture and fine detail view. They must have the ability to work and debate effectively and adjudicate, acting objectively on the evidence applying the principles of natural justice.



Amerdeep Somal
Chief Commissioner

Amerdeep Somal is Chief Commissioner at the Data & Marketing Commission. She was appointed

the Complaints Commissioner to the Financial Regulators (Bank of England, FCA and PRA) on 1st November 2020 and is Judge of the Asylum and Immigration Tribunal. Amerdeep sits on the Board of the Parliamentary and Health Service Ombudsman.

Amerdeep was formerly the Independent Assessor to the Financial Ombudsman Service and Board member at the General Medical Council. She is a former founding Commissioner at the Independent Police Complaints Commission, has held a number of Board roles and her earlier career was as a senior civil servant.



Fedelma Good
Industry Commissioner

Fedelma is co-lead of PwC's Data Protection Strategy, Law and Compliance practice in London.

The team operates as part of PwC's global data protection network, providing privacy advice and guidance to some of the world's best-known brands.

Fedelma has contributed to a number of industry working groups over her years in the industry including, for example, those relating to cookies and the development of best practice guidelines for the use of data for marketing purposes. She is recognised particularly for her digital marketing/e-privacy knowledge and her ability to translate complex

technical and legal issues into practical, understandable details.

She is former deputy chair of the UK DMA board, is an honorary fellow of the IDM and a frequent presenter at data protection, privacy, e-privacy and information governance conferences across Europe.



Charles Ping
Industry Commissioner

Charles is an established leader in data and marketing and is the Managing Director of

Winterberry Group, a specialised management consultancy, and the founder of Charles Ping Associates, advising both clients and agencies on marketing, strategy, leadership and regulation. He has worked at a senior level as a client, a supplier and in the agency world. He was most recently Chief Executive and Chairman of Fuel Data and UK Board member of Engine.

Charles is a former Chairman of the Direct Marketing Association and non-Executive Director for the Advertising Board of Finance (the key funding body for non-broadcast advertising self-regulation) and sits on the Governance Board of the Data Protection Network. Outside of work Charles lives in Suffolk and enjoys film, classical music and rebuilding and racing vintage cars.



Karen McArthur
Independent Commissioner

An experienced and values driven NED with a portfolio of roles in consumer advocacy and public protection

including Chair of the Waterways Ombudsman, London Travel Watch, Independent Stakeholder Chair for the Heat Trust, an organisation preparing for statutory regulation, and a member of the integrity panel for Age Check Certification Scheme, which is the first ICO approved certification scheme for the Children's Code.

Additionally, she sits on and chairs professional standards/fitness to practice panels for statutory regulators as well as being an independent member on the Armed Forces Service Complaints panel.



Quinton Quayle
Independent Commissioner

Quinton has sat on a number of boards, with a focus on regulation, health and the legal

sector. He currently serves as Chair/ Panel Member of High Speed 2's "Need to Sell" Panel.

Quinton is a fluent Thai speaker and currently advises several companies with investments in Thailand, including Prudential, Thai Beverages and Gurin Energy.

Prior to joining the private sector, Quinton was a member of the Diplomatic Service and served as British Ambassador to Romania and to Thailand.

Chief Commissioner's Report

by Amerdeep Somal



This is my third Annual Report from the Data & Marketing Commission. This year has, again, incorporated yet more of the Covid pandemic which has affected all of us individually as well as our businesses. In terms of our remit, this has remained the same as last year, but we have progressed our plans to become an accredited Monitoring

Body for the Information Commissioner's Office (ICO) with an enhanced remit to enforce the DMA's GDPR Code of Conduct, through the registration of organisations who sign up to the Code, with ongoing monitoring and the subsequent investigation of complaints. We hope that our Monitoring Body status will be achieved by the end of this year. In the meantime, we continue to enforce the DMA members' Code and this will remain in place as part of our revised remit.

Last year, I informed you that we had been working closely with a dynamic agency to revise our branding and positioning. This process is complete thanks to a small task force which has worked successfully to ensure that we are positioned and structured in the right way to ensure that consumers can reach us and be assured that their complaints are being dealt with professionally, sensitively and, of course, independently.

Our message to members of the DMA and, in due course, to organisations who sign up to comply with the new GDPR Code of Conduct is to put the customer first. It is of paramount importance that this key standard is applied now more than ever before, at this time of national and global uncertainty.

This year, as in the last two years, complaints have been low. As last year, we believe that the pandemic is not entirely responsible for the lower numbers. Members are aware of the key message – to put the customer first, and consumers are aware that their data really matters and they understand the importance of their privacy. As always, we continue to treat consumers with empathy and we aim to give them a personal experience which will impact their outlook towards privacy and data in a positive way which in turn can only encourage the industry to use its marketing activity as a force for good.

Finally, I would like to say farewell and thank you to our two Industry Commissioners – Fedelma Good and Charles Ping. They are to leave the DMC later this year and I thank them for their invaluable support and expert guidance over their six year tenure. Our Independent Appeals Commissioner John Bridgeman CBE TD DL, is also retiring this year. John has made an invaluable contribution to the DMC, in particular around the application of natural justice, and I would like to thank him for his expert input to the investigation process.

Thank you for reading our 2021-22 Annual Report.

We have progressed our plans to become an ICO accredited Monitoring Body with an enhanced remit to enforce the DMA's GDPR Code of Conduct.

Complaints History

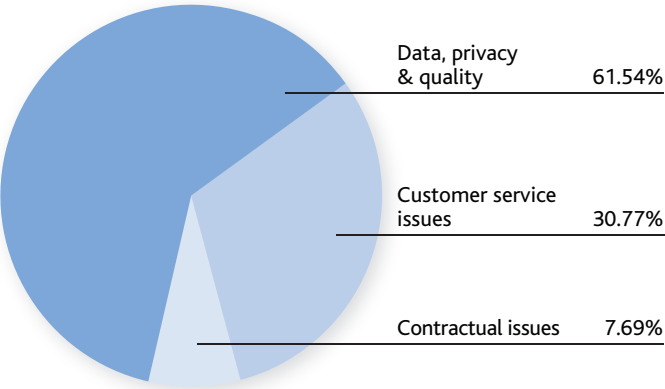
This year the DMC recorded just 50 complaints against businesses in the data driven marketing sector. The DMC’s Secretariat investigated 12 consumer and business-to-business complaints involving members and 38 complaints against non-members. The Secretariat referred, where necessary, non-member complaints to other statutory or self-regulatory bodies and in some cases, particularly for concerns from consumers who were unable to unsubscribe from unwanted emails, the Secretariat made contact with businesses that lie outside of membership to inform them of their legal commitments and request that they unsubscribe the individual’s email address. There were no formal adjudications necessary this year.

When we look at possible breaches of the DMA Code, we look at whether the issue is specific to the individual complainant or possibly a symptom of a more systemic problem. We examine each case fairly and proportionately and where there are serious breaches of the Code, repeated breaches or ongoing complaints we will progress to a formal investigation which would culminate in an adjudication and an independent review from the DMC Board. There may be some cases which revert to an informal investigation if it becomes clear that the case did not merit a substantive process and formal outcome.

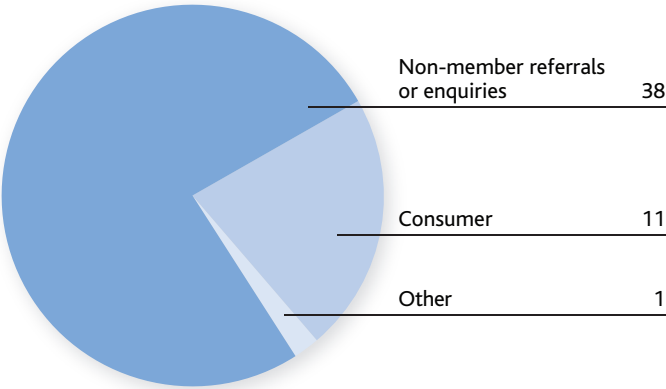
Whilst there were no formal adjudications this year, nonetheless, there were cases which went through a rigorous investigation. One such investigation involved the examination of a member’s processes, in relation to the data they collected from suppliers, their due diligence and other processes to ensure data was properly sourced, permissioned and cleaned. The procedures in place were found to be generally robust, though the member was advised to re-evaluate their aged data to ensure it was not retained for longer than was reasonable. The case was informally resolved following an informal meeting with the member.

We will provide feedback to the DMA following formal cases, particularly if the problems we have seen have become a common practice, or where there may be a case for change in membership or compliance and where the DMC could distribute messages to its membership about Code compliance and how the DMC is interpreting the Code.

General Nature of Complaints
1 July 2021 – 30 June 2022



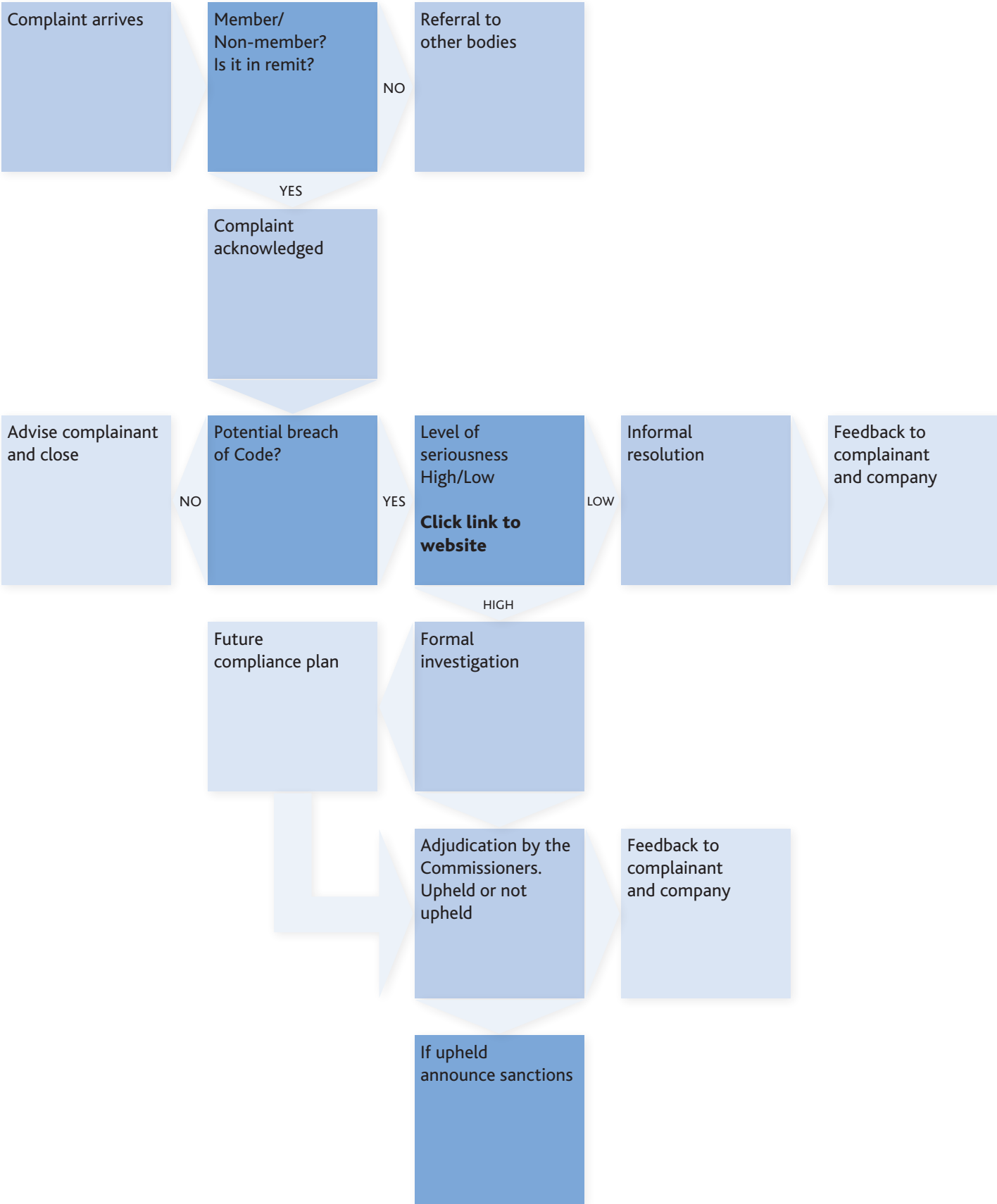
Number of Complaints
1 July 2021 – 30 June 2022



Non-member complaints are referred to organisations such as Trading Standards, Information Commissioners’ Office, OFCOM.

The Complaint Process

The DMC investigates complaints against DMA members involving breaches of the DMA Code. It will investigate any complaint made against a DMA member that relates to one-to-one marketing activity and falls under the scope of the Code. The chart below explains how the DMC handles its complaints.



Thoughts from a year as an Independent Commissioner

Karen McArthur, Independent Commissioner



Since joining the DMC I've been involved in two complaints against members which though they were under an informal investigation, attracted the direct involvement of Commissioners in their resolution. As an independent member I have benefitted from the insight and expertise which my professional colleagues, Charles and Fedelma each brought to both of these investigations. I like to think that I brought a wider perspective, reflecting on what the man on the proverbial Clapham omnibus would think and expect in relation to members' actions. The involvement of independent and professional Commissioners at the informal resolution stage provides an early opportunity to resolve consumer issues bringing balance, pragmatism and of course the level of independence which is core to the DMC.

I was impressed by the way in which each of the two DMA companies engaged with the Commissioners. They prepared and committed senior staff to the process and were open and frank in their discussions. This approach helped to bring about a positive resolution in both cases and most importantly a resolution for the customers affected.

It can be hard to identify patterns and trends from such a small number of complaints, however from both complaints there have been lessons learnt for the companies involved and for the DMC itself. We have sought to embed these lessons into the way we operate. The world is always changing and that's never been more true than over the last couple of turbulent years. Whether it's evolution or revolution there's always a better way of seeing things and we should all continue to learn lessons and build up our individual and corporate knowledge to strengthen the DMC as it prepares for its new, and more challenging role.

The DMC is currently funded by the DMA but as we go forward we will need to be financially as well and organisationally sustainable. Over the last year we have focused on reviewing the governance structure which, while not yet complete, will support greater organisational independence. This change brings challenges and opportunities. The governance review and all the associated work should be complete by the time we formally apply for ICO Monitoring Body status in the Autumn. Along with the brand and risk register work we should enable the DMC to weather whatever comes along.

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First Impressions

Quinton Quayle, Independent Commissioner



I have called this 'First Impressions' as a throwback to my days in the Diplomatic Service – recalling a time when each newly-appointed British Ambassador was expected to report back to Head Office on how their new posting struck them shortly after arrival. The theory was that Ambassadors might report more candidly on their host government, warts and all, at the start of their posting rather than waiting until they had been charmed by foreign ministers and “gone native” in the jargon.

I joined the DMC in January 2021 so there is perhaps sufficient time now for me to have “gone native”. However, I still feel very much like a new entrant who is on a steep learning curve. So, I think I am sufficiently fresh and inexperienced to give some “first impressions”. One thing I would report is that the organisation feels different from the inside compared to what I thought it would be when I applied for the role. My sense then was the DMC was essentially a complaints-handling organisation. Of course, dealing with complaints about DMA members remains important, but the DMC’s role is fast becoming much more than that. I feel that I have joined the organisation at a very exciting stage in its evolution. The agreement we have reached in principle with the ICO that the DMC should become an accredited Monitoring Body to enforce the GDPR Code of Conduct, represents a step change in the DMC’s role and public profile. Of course, the DMC will still handle complaints, but the focus will be on helping firms comply with the new Code of Conduct, and firms signing up for the new Code of Conduct will, we hope, extend well beyond just DMA members. The DMC will need greater visibility to carry out its new role effectively and this is reflected in the new branding which will be rolled out in due course.

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Reflections

Charles Ping and Fedelma Good, Industry Commissioners



Fedelma Good

I'm about to head off to my final meeting as an Industry Commissioner. It's a bittersweet moment as I feel incredibly privileged to have had the opportunity to serve two terms as an Industry Commissioner alongside Commissioners past (Dr Simon Davey FRSA, Rosaleen Hubbard, George Kidd)

and present (Quinton Quayle, Karen McArthur and my fellow Industry Commissioner Charles Ping and Chief Commissioner Amerdeep Somal) and will feel a definite pang at saying 'goodbye'. Thank you all for being such great colleagues (and friends), I have benefitted hugely from getting to know and work with you all.

At the same time as being sad to leave, I can't help feeling excited for the future of the DMC as it welcomes on board Robert Bond and Gilbert Hill who have been named as the two new Industry Commissioners (congratulations!). The DMC is in the process of becoming a Monitoring Body for the Information Commissioners' Office following approval of an industry GDPR Code and it also has a further extended remit in support of the Advertising Standards Authority (ASA) with complaints by consumers in relation to data and in particular Legitimate Interest and related matters.

I wish the existing and new Commissioners every success in what feels like the beginning of a defining period for the DMC!



Charles Ping

As I stand down after six years as an Industry Commissioner we've seen some significant changes.

The acceptance by regulators, consumers and the marketing services sector that the collection and use of data need to be more thoughtfully implemented has started to have real

traction after a number of years of lip service.

The adoption of the idea that consumers should be informed and have meaningful control is now becoming global, and the DMA members who have long championed this approach can be rightly comforted that they have been ahead of the curve.

Over my time we have seen a number of members resign from DMA membership as a route to avoid further scrutiny. This is unfortunate and short-sighted because being on the right side of history in this sector is a driver of sustainable advantage and I would like to believe that former members will see, in the longer term evolution of the DMC and its work, that a principles-based code is one to embrace rather than avoid.

I've enjoyed immensely the debates and discussions around the table with current and former Commissioners, and the role that a balanced group has in teasing out the core of an issue. Industry bodies too often fall foul of groupthink, with participants sharing common backgrounds, day-to-day roles and day-to-day challenges. The broad base on the DMC, with a majority of independent voices is key to the value and influence of the body. The independence from the DMA is also critical in the DMC fulfilling its brief but the support also given by that body is acknowledged and welcomed.

So as I depart in December and hand over to some excellent new Commissioners I can see a brighter future for the role of the DMC in playing a crucial role in enhancing the industry through better regulation.

The DMC is in the process of becoming a Monitoring Body for the Information Commissioners' Office following approval of an industry GDPR Code.

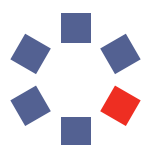
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The Data & Marketing Commission

Registered Number: 6469055

Registered Office:
70 Margaret Street
London
W1W 8SS

T: 020 7291 3350
E: dm@dmcommission.com
W: www.dmcommission.com



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